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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,499	06/29/2001	Robert R. Grupe	NAIIP013/01.082.01	7244
28875	7590	06/02/2005		
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			EXAMINER DARROW, JUSTIN T	
			ART UNIT 2132	PAPER NUMBER

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/895,499	GRUPE, ROBERT R.
	<b>Examiner</b>	<b>Art Unit</b>
	Justin T. Darrow	2132

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on IDSes filed 11/04/2002 and 06/19/2002.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 30 and 31 is/are allowed.
- 6) Claim(s) 1-4 and 7-29 is/are rejected.
- 7) Claim(s) 5 and 6 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 June 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. Claims 1-31 have been examined.

***Information Disclosure Statement***

2. The information disclosure statements (IDSes) filed on 11/01/2002 and 06/14/2002 were filed before the mailing date of the first Office action on the merits. The submission is in compliance with the provisions of 37 CFR 1.97(b)(3). Accordingly, the information disclosure statements are being considered by the examiner.

***Specification***

3. The use of various trademarks for various operating systems and programming languages has been noted in this application (see specification, page 8, lines 25-30). They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 11, 20, and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11, 20, and 29 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: structural elements in which the different logic functions are implemented. See MPEP § 2106 V. A. 2.

#### ***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 10, 19, and 28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A computer program product comprising various computer codes is computer listing *per se*, i.e., a description or expressions of the programs, not physical “things.” See MPEP § 2106 IV. B. 1(a). This rejection can be overcome by claiming a computer-readable medium encoded with a computer program. *Id.*

#### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-4, 7-11, and 21-29 are rejected under 35 U.S.C. 102(a) as being anticipated by PR Newswire, "F-Secure's Anti-Virus for Firewalls and Anti-Virus for Internet Mail Is Supported by Stonebeat® Securitycluster™ from Stonesoft."

As per claims 1-4 and 7-11, PR Newswire reports a scanning method, computer program product for scanning, and a scanning system, comprising:

receiving data at a network element (see ¶ 1; transmission of Internet Mail received at a firewall in a gateway);

identifying a load on the network element (see ¶ 1; recognizing a load in load balancing; see ¶ 2; with a load backlog);

and

conditionally scanning the data at the network element based on the load on the network element (see ¶ 1; recognizing a load in load balancing at a firewall at a gateway; see ¶ 2; content scanning where the firewall at the gateway is one of several elements in a cluster performing the scanning; see ¶ 2; with a load backlog accommodated to provide continuous availability of content scanning; see ¶ 9; coordinating load balancing for content scanning with other applications implemented with other servers).

As per claims 21-29, PR Newswire reports a scanning method, computer program product for scanning, and a scanning system, comprising:

receiving data at a network element (see ¶ 1; transmission of Internet Mail; see ¶ 3; received at site-based and mobile workers utilizing user devices );  
determining the extent to which data was previously scanned by another network element (see ¶ 2; scanning in a coordinated effort by a cluster of interconnected systems);  
and

conditionally scanning the data at the network element based on the extent of previous scanning (see ¶ 2; content scanning where the user device is one of several elements in a cluster performing the scanning; see ¶ 2; with scalable content scanning depending on the cluster continuously available to complete scanning; see ¶ 9; dynamic load balancing to coordinate scanning among elements in accordance with information from other applications stored among the elements).

9. Claims 12-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Albrecht, U.S. Patent Application Publication No. US2001/0005889 A1.

As per claims 12-20, Albrecht describes a scanning method, computer program product for scanning, and a scanning system, comprising:

receiving data at a network element (see ¶ [0044]; figure 1, items 4b, 4c, and 4d; any of a mail server, proxy server, and database server receive files transferred to and from as e-mails, www files, and data from a data storage facility);

determining whether there is a request for the data (¶ [0044]; figure 1, items 4b, 4c, and 4d; determining how the file is being transferred in accordance with a request, such as from an e-mail sender for e-mails, a web site visitor for www files at user devices);

conditionally scanning the data at the network element based on whether there is a request for the data (¶ [0044]; figure 1, items 4b, 4c, and 4d; determining how the file is being transferred in accordance with a request, such as from an e-mail sender for e-mails, a web site visitor for www files; see ¶ [0047]; figure 3; scanning in accordance with a Request File Portions message sent to the agent scanner in the server where the file is partially scanned; see ¶ [0048]; and complete scanning whether or not there is a request for the data with a Return Scan Result message concerning the status); and

transmitting the data in response to the request (see ¶ [0048]; after completion of scanning, allowing the file transfer to proceed).

As per claims 21-29, PR Albrecht discloses a scanning method, computer program product for scanning, and a scanning system, comprising:

receiving data at a network element (see ¶ [0043]; figure 1, item 4; a protected user system intercepting a file);

determining the extent to which data was previously scanned by another network element (see ¶ [0043]; figure 1, item 4; determining if the kind of file intercepted is likely to have a new virus not previously scanned);

and

conditionally scanning the data at the network element based on the previous scanning (see ¶ [0043]; figure 1, item 4; scanning the file on-the-fly for viruses not likely scanned previously; see ¶ [0047]; figure 3; scanning by the agent scanner in the protected system based on a Request File Portions message where the file is partially scanned; see ¶ [0048]; and complete scanned with a Return Scan Result message concerning the status).

***Allowable Subject Matter***

10. Claims 30 and 31 are allowed.
11. Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Smithson et al., U.S. Patent No. 6,802,012 B1, describes scanning files in accordance with allocated priority.

***Telephone Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin T. Darrow whose telephone number is (571) 272-3801, and

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whose electronic mail address is justin.darrow@uspto.gov. The examiner can normally be reached Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barrón, Jr., can be reached at (571) 272-3799.

The fax number for Formal or Official faxes to Technology Center 2100 is (703) 872-9306. In order for a formal paper transmitted by fax to be entered into the application file, the paper and/or fax cover sheet must be signed by a representative for the applicant. Faxed formal papers for application file entry, such as amendments adding claims, extensions of time, and statutory disclaimers for which fees must be charged before entry, must be transmitted with an authorization to charge a deposit account to cover such fees. It is also recommended that the cover sheet for the fax of a formal paper have printed "**OFFICIAL FAX**". Formal papers transmitted by fax usually require three business days for entry into the application file and consideration by the examiner. Formal or Official faxes including amendments after final rejection (37 CFR 1.116) should be submitted to (703) 872-9306 for expedited entry into the application file. It is further recommended that the cover sheet for the fax containing an amendment after final rejection have printed not only "**OFFICIAL FAX**" but also "**AMENDMENT AFTER FINAL**".

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-2100.

May 31, 2005

*Justin Darrow*  
JUSTIN T. DARROW  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 2100